

FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
JULY 6, 2010

**CALL TO
ORDER**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Board members present were Scott Hollinger, Mark Hash, Gary Krueger and Craig Wagner. Gina Klempel had an excused absence. Bailey Iott, Allison Mouch and Jeff Harris represented the Flathead County Planning & Zoning Office.

There were 39 people in the audience.

**APPROVAL OF
MINUTES**

Krueger motioned and Hash seconded to approve the June 1, 2010 minutes. The motion passed unanimously with Wagner abstaining.

**PUBLIC
COMMENT**
*(not related to
agenda items)*

None.

**JEANNINE
ZOLLINGER
(FCU-10-08)**

A request by Jeannine Zollinger for a Conditional Use Permit to allow a family hardship dwelling within the West Valley Zoning District. The property is located at 161 West Valley Acres.

**MAIN MOTION
TO SUSPEND
THE RULES**

Krueger made a motion and Wagner seconded to suspend the rules.

**BOARD
DISCUSSION**

Krueger discussed issues with procedure of how the application was brought forward and how he wanted to proceed. These issues included the differences between a permitted use and a conditional use in the West Valley area, under which use the application fell, and a determination by the zoning administrator which stated this was a primary use and only one use was allowed at a time and that was why a conditional use was required. He felt the public had not had a full opportunity to review the zoning administrator's determination while the applicant did have a full opportunity. He said the people of West Valley could appeal the determination by stating that it did not exist as a conditional use and it wasn't a primary use, therefore the board should not be hearing the application at all.

Hollinger asked for clarification on what Krueger wanted suspended.

Krueger said they should vote on whether or not the board could even issue a conditional use permit (CUP) in West Valley for a hardship.

Hollinger asked Wagner for clarification on procedure for a motion to suspend the rules.

**VOTE TO
SUSPEND THE
RULES**

The motion passed unanimously.

**BOARD
DISCUSSION**

Hash asked if Harris understood Krueger's issues.

Harris said he was unfortunately out of the room at the time Krueger spoke.

Krueger said he believed the board should determine whether or not they could issue a CUP for this application since it was not a conditional use in the West Valley Zoning District.

Harris asked if Krueger was appealing the interpretation.

Krueger said no, he moved to suspend the rules because if they heard the application then they had pushed the application to discord for judgment when that was a part of the case, when if the board determined that no, in fact they couldn't, then the application would have to go back to the planning board for proper placement of the conditional use in the West Valley Zone. That would trigger public hearings in West Valley, at the planning board level and notice to the public at the commissioner level because it's not in the conditional uses of West Valley. He believed the people who were opposed to this application would have opportunity to appeal along the way.

Harris explained that Krueger was right that a hardship dwelling in West Valley was not a conditional use, but a permitted use and it was specific as a permitted use and that was how staff addressed it. He went on to explain different uses on the land in the West Valley area.

Staff and the board discussed how the determination of the use for this application was decided on and the processes involved

with the application and the possibility of an appeal. They also discussed the process with an administrative use permit and what changed an application from an administrative use permit application to a conditional use application. The difference between a second use versus a primary use, permitted uses, the definitions of a principle use and permitted uses were also discussed. They also debated the differences in the regulations in the West Valley area from the regular zoning areas, accessory uses, ways to remedy the differences between the West Valley regulations and the regular zoning regulations, how a property could have more than one principle use, if the public saw the letter of determination and if the neighbors could have appealed that determination at length. They also discussed the procedures to unsuspend the rules.

**MAIN MOTION
TO STOP THE
SUSPENSION
OF THE RULES**

Hollinger motioned and Wagner seconded to stop the suspension of the rules.

**BOARD
DISCUSSION**

The board and Harris discussed how to best proceed and discussed the procedures which needed to be followed.

**MAIN MOTION
TO CONTINUE
FCU 10-08
UNTIL THE
8-3-10
MEETING**

Hollinger motioned and Wagner seconded to continue FZV 10-08 until the 8-3-10 Board of Adjustment meeting.

**BOARD
DISCUSSION**

Harris said staff would make available copies of the zoning interpretation to members of the public.

**ROLL CALL TO
CONTINUE FCU
10-08 UNTIL
THE 8-3-10
MEETING**

On a roll call vote, the motion passed unanimously.

**BOARD
DISCUSSION**

Hash asked for a walkthrough of the procedure of how the interpretation for this application was arrived at.

Harris clarified for the members of the public when and where the next BOA meeting would be held.

Hash recused himself from the next application FZV 10-02.

**MARY ALICE
LAPP
(FZV 10-02)**

A request by Mary Alice Lapp for a Zoning Variance to property within the Evergreen, R-1 (Suburban Residential) Zoning District. Anticipating a future lot division, the applicants are requesting a variance to Section 3.09.040 (1), Bulk and Dimensional Requirements, of the Flathead County Zoning Regulations which requires a 1 acre minimum lot area. The 3.3 acre subject property is located at 41 River Road in Kalispell.

STAFF REPORT

Alex Hogle reviewed staff report FZV 10-02 for the board.

**BOARD
QUESTIONS**

The board and Hogle discussed where the R-2 zoning mentioned in the staff report was located, if sewer was connected to the property, and the size of the proposed lot.

**APPLICANT
PRESENTATION**

Dave Heine introduced his mother-in-law, Mary Alice Lapp who wanted to make some comments.

Lapp recounted her history on the property and why she applied for the zoning variance.

Heine handed out maps and pictures to the board and spoke about where the property was located, the zoning in the area, the fact Mrs. Lapp was not a developer, dealing with the rental house on the property, the yard for the rental property being clearly defined and appeared owned by another individual, the fact the hardship was not created by Mrs. Lapp, she did not request the R-1 zoning originally, problems solved with sewer connected to the property, and that the variance would not have any negative impact on the neighbors.

**BOARD
QUESTIONS**

None.

**PUBLIC
COMMENT**

Don Seaman, 33 Nicklson Drive, owned property east of the property in question, had a question about how the land got water if they were not hooked up to Evergreen Water. He had questions about what could be done on the property in the future.

**STAFF
REBUTTAL**

Hogle summarized comments he received from public agencies which said there was no water services to the properties. He said the homes share a well.

**BOARD
DISCUSSION**

Heine said there were three separate wells on the property.

Wagner said they did have two letters of support from neighbors.

Hollinger said it was more of a zone change issue and went on to explain why.

Krueger said variances were very hard to give and there were a lot of criteria which didn't apply to this application.

**MAIN MOTION
TO ADOPT
F.O.F.,
(FZV 10-02)**

Krueger made a motion seconded by Wagner to adopt staff report FZV 10-02 as findings-of-fact.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
ADOPT F.O.F
(FZV 10-02)**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
DENY
(FZV 10-02)**

Krueger made a motion seconded by Wagner to deny FZV 10-02.

**ROLL CALL TO
DENY
(FZV 10-02)**

On a roll call vote the motion passed unanimously.

**COFFEE TIME
(FCU 10-07)**

A request by Daniel Scheffer and Melody Watts for a Conditional Use Permit to construct and operate a drive-through coffee stand within the Happy Valley, B-1 (Neighborhood/Professional Business) Zoning District. The property is located at 4885 Highway 93 South; on the east side of US Highway 93 between Kalispell and Whitefish near the entrance to the Happy Valley Homesites Subdivision on Timber Lane.

STAFF REPORT

Allison Mouch reviewed staff report FCU 10-07 for the board.

**BOARD
QUESTIONS**

None.

APPLICANT PRESENTATION	Mark Rhodes, was the owner of Coffee Time at the corner of 93 and West Reserve, went over the history of the application. He spoke about the stacking parking spaces and possible remedies for the situation.
BOARD QUESTIONS	None.
PUBLIC COMMENT	None.
STAFF REBUTTAL	None.
BOARD DISCUSSION	<p>Krueger asked for clarification on the required stacking spaces for the drive through coffee stand.</p> <p>Mouch clarified the required stacking spaces and why three instead on five spaces might be reasonable.</p>
MAIN MOTION TO ADOPT F.O.F. AND APPROVE (FCU 10-07)	Wagner made a motion seconded by Hash to adopt staff report FCU 10-07 as findings-of-fact and approve.
BOARD DISCUSSION	None.
ROLL CALL TO ADOPT F.O.F., ETC AND APPROVE (FCU 10-07)	On a roll call vote the motion passed unanimously.
KRUEGER (FCU 10-06)	A request by Kenneth & Beulah Krueger and Gary & Jessica Krueger for a Conditional Use Permit for gravel extraction to allow a concrete and asphalt batch plant within the West Valley Zoning District. The applicants are proposing a concrete batch plant on a 12 acre site located on an adjacent parcel from a previously approved sand and gravel extraction site; and an asphalt batch plant on the 80 acre site which was currently operating as a sand and gravel extraction site known as the Krueger Pit through an existing conditional use permit, (FCU-06-02). The properties are located at 2440 West Springcreek Road.

**BOARD
DISCUSSION**

Krueger recused himself and requested a short recess.

The board reconvened at 7:30.

STAFF REPORT

Andrew Hagemeier reviewed Staff Report FCU 10-06 for the Board.

**BOARD
QUESTIONS**

None.

**APPLICANT
PRESENTATION**

Gary Krueger, 805 Church Drive, gave the history of the application, gave the board handouts, discussed which concrete batch plant he would use, how tall the plant would be, why he needed a taller plant than what was conditioned, and his request to remove that condition. He also spoke about how he would try to mitigate the height issue of the plant, the fact he felt the staff was very thorough and they didn't bring up any issues he didn't have a plan to mitigate.

**BOARD
QUESTIONS**

None.

**PUBLIC
COMMENT**

Clara LaChappelle, 3580 Farm to Market Rd, was not in favor of the application.

FC Bailey, 525 Sanctuary Road, was not in favor of the application.

Bill Spurzem, 444 Prairie View Rd, was not in favor of the application.

Julia Byrnes, 1025 Dun Movin' Lane, was not in favor of the application.

Kristen Krueger, 2420 West Spring Creek Rd, was in favor of the application.

Bruce Tutvedt, 2335 West Valley Drive, was in favor of the application.

Kent Krueger, 154 North Meridian Rd, was in favor of the application.

Linda Newgard, 95 Clark Drive, was not in favor of the application.

Mark Schwager, West Valley Drive, was not in favor of the application.

Carol Marino, 1555 Church Drive, was not in favor of the application.

Ryan Krueger, 2410 Spring Creek Road, was in favor of the application.

Jessica Krueger, 805 Church Drive, was in favor of the application.

Kris Krueger, 805 Church Drive, was in favor of the application.

**STAFF
REBUTTAL**

Hagemeier clarified where the maximum height requirement in the conditions came from which was the West Valley Zoning Regulations. He pointed out in the staff report where the traffic information was and explained further.

**APPLICANT
REBUTTAL**

Krueger clarified what he meant by removing the condition concerning height for the concrete batch plant, how difficult a variance would be to attain, the height of the asphalt plant compared to the height of the concrete batch plant and where it would be located, the standards of the road and his conscientiousness on maintenance and appearance of his operations.

**BOARD
DISCUSSION**

The board and staff discussed the asphalt plant and if it would run all the time, if it would be temporary, the fact the valley was changing and how that affected the West Valley area, what the board's role was, the 35' height requirement for the concrete batch plant, the possibility of setting a precedence, the fumes which would be coming from the plant, possible implementation of restrictions on what level of efficiency would be required for the batch plants, and the expertise of staff with the specifics of batch plants. They continued to discuss the improvement in efficiency in many areas of operations, other structures which were allowed which were over the 35' height limit, possible ways to condition the height for this particular applicant, and limitations on how long a gravel pit could operate.

**MAIN MOTION
TO ADOPT
F.O.F, ADD
F.O.F. #7 AND
AMEND
F.O.F #8
(FZV 10-02)**

Hash made a motion seconded by Wagner to adopt staff report FCU 10-07 as findings-of-fact with the addition of a new finding of fact #7 and an amendment to the existing Finding of Fact #8 (formally #7) as follows:

Finding #7- *The asphalt batch plant is proposed to be located within the gravel pit, approximately 25 feet below surface elevation.. The height of the plant will be within 35 feet of the surface grade.*

Finding #8- Fencing and screening for the proposed extractive industry *concrete plant* is acceptable because the applicant can utilize existing vegetation *and adjacent agricultural buildings to minimize visual impacts* and the for screening for the concrete batch plant, the asphalt batch plant will be located approximately 25 feet below natural grade limited to 35 feet above natural grade.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
ADOPT F.O.F,
ADD F.O.F. #7
AND AMEND
F.O.F #8
(FZV 10-02)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

The board and staff discussed proper wording for the approval on the conditions and approval of the application.

**MAIN MOTION
TO AMEND
CONDTION #9
AND APPROVE
(FZV 10-02)**

Hash made a motion and Wagner seconded to approve the application with the amendment to condition #9 as follows:

9. Non-agricultural structures associated with the asphalt ~~and concrete~~-batch plants shall not be over 35 feet in height measured from the natural grade. ~~Any non-agricultural structures taller than 35 feet in height measured from the natural grade would require a variance from Section 3.34.040(4) FCZR.~~ Non agricultural structures associated with the concrete batch plant shall not be taller than the tallest agricultural structure with one quarter mile of the subject property as pursuant to Section 3.03.020(6) FCZR.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
AMEND
CONDITION #9
AND APPROVE
(FZV 10-02)**

On a roll call vote the motion passed unanimously.

OLD BUSINESS

Wagner asked Harris about an email he had received which concerned the BOA's revocation authority for CUPs which were not meeting their conditions.

Harris gave a history of the issue in the email.

Hollinger brought up a past discussion about the board receiving the packet material electronically.

Donna Valade, board secretary, Harris and the board discussed the pros and cons of receiving the information on CD's, as well as the information being available on line.

Krueger brought up a letter he had received from the commissioners concerning a decision the board had made at a previous meeting. He had a list of questions for legal staff and requested answers to his questions.

NEW BUSINESS

Harris updated the board on what was on the agenda for their next meeting.

ADJOURNMENT

The meeting was adjourned at approximately 9:30 pm. on a motion by Wagner. The next meeting will be held at 6:00 p.m. on August 3, 2010.

Scott Hollinger, President

Donna Valade, Recording Secretary

APPROVED AS **SUBMITTED**/CORRECTED: 8/3/10